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16 Attorneys for Defendant  
17 YEVGENIY ALEXANDROVICH NIKULIN

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20 IN THE UNITED STATES DISTRICT COURT  
21  
22 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
23  
24 SAN FRANCISCO DIVISION

25  
26 UNITED STATES OF AMERICA,

27 Plaintiff,

28 v.

15  
16  
17 YEVGENIY ALEXANDROVICH NIKULIN,

18 Defendant.

19 No. CR-16-00440 WHA

20  
21 DEFENDANT'S RESPONSE TO UNITED  
22 STATES' MOTION IN LIMINE NO.  
23 THREE RE OPENING STATEMENTS

24  
25 Pretrial Conference: February 19, 2020

26 Trial Date: March 9, 2020

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28 The defense objects to the government purporting to dictate the scope of the defense  
opening statement. In the *United States' Motion In Limine Number Three*, the government posits  
that "...defense counsel often include a recitation of the defendant's personal history during  
opening statements that is never supported by factual evidence introduced at trial. Counsel's  
statements may include references to defendant's background, such as educational history and

1 family ties, or to other “facts” about his history.” A criminal defendant has a constitutional right to  
2 testify on his or her own behalf at trial. A right that, although nowhere found in the Constitution,  
3 emanates from various provisions of the Bill of Rights. *Rock v. Arkansas*, 483 U.S. 44 (1987).  
4 The right to testify is a “personal” right that cannot be waived by defense counsel without  
5 defendant’s consent. *Ward v. Sternes*, 334 F.3d 696, 705 (7<sup>th</sup> Cir. 2003).  
6

7 Here, the defense agrees that an opening statement is a road map to what the evidence at  
8 trial will show. If statements are made during opening statement that do not ultimately comport  
9 with the evidence at trial, either side may freely comment on that fact in closing argument. Indeed,  
10 the court will likely instruct the jury that the comments of the lawyers in opening statement are not  
11 evidence. Beyond that, the defense objects to any further ruling on the parameters of opening  
12 statement.  
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14 DATED: February 11, 2020  
15 /s/ Adam Gasner  
16 Adam G. Gasner, Esq.  
17 Attorney for Defendant  
18 YEVGENIY ALEXANDROVICH NIKULIN  
19  
20 DATED: February 11, 2020  
21 /s/ Valery Nechay  
22 Valery Nechay, Esq.  
23 Attorney for Defendant  
24 YEVGENIY ALEXANDROVICH NIKULIN  
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